

Alice Yeh/R2/USEPA/US

01/24/2006 04:05 PM

To Ray Basso

cc

bcc

Subject Fact sheet on NJDEP Directive & lawsuit

You had wanted it electronically



RA-Jackson 0105 mtg Passaic Directive.doc

**Passaic River: NJDEP's Directive and Lawsuit**

**Issue**

On 12/14/05, Commissioner Campbell issued a Directive to Occidental Chemical Corporation (OCC) requiring them to pay NJDEP \$2.3 million to develop a plan to dredge the lower 6 miles of the Passaic River to remove dioxin-contaminated sediments down to 17 ppt or some other standard. Campbell also filed a lawsuit against OCC seeking declaratory judgment cost recovery.

While EPA has expressed its opposition to the Directive to Campbell, EPA has not had a chance to explain its position to the Commissioner Jackson and to ask what her position is on the Directive and lawsuit.

**Desired Outcome**

Ex. 5, predecisional & deliberative; atty-client communication

**Action Taken to Resolve Issue**

Ex. 5; predecisional & deliberative; atty-client communication

PA (in

RA letter dated 11/14/05) and the other Federal partner agencies (USACE, NOAA and USFWS) wrote to Campbell documenting EPA's opposition to the Directive, with the following reasons:

- Directive does not address all of the contaminants that are causing problems in the river;
- It does not consider all of the areas in the river where those contaminants might reside;
- It does not consider all appropriate remedial options, as required by law.
- Dredging down to 17ppt dioxin could result in the removal of 10 million cubic yards of sediment, which exceeds the magnitude of final remedies on Hudson and Fox Rivers.
- Directive targets one PRP, while EPA already has an agreement in place with 43 PRPs.
- Directive might duplicate and disrupt the joint CERCLA-WRDA study already underway by EPA and partner agencies.

Ex. 5: predecisional and deliberative

Ex. 5; predecisional & NJDEP staff has agreed to participate in the work group meetings scheduled to direct the IRM evaluation and to hold future discussions on how NJDEP's efforts under the Directive might be coordinated with the CERCLA-WRDA IRM evaluation.

## **Background**

OCC's attorneys have visited EPA OSWER managers and Region 2 staff, as well as DOJ, NOAA and USACE staff, to discuss OCC's potential response to NJDEP's lawsuit. OCC has asked the federal agencies to meet with NJDEP to press for a stay of the lawsuit in return for payment of \$2.3 million for NJDEP to use for early restoration work. According to OCC, Pascrell and Menendez's office will be sending letters to EPA and USACE urging a meeting with NJDEP.

The partner agencies have made progress on the joint CERCLA-WRDA Study:

- In July 2004, NJDOT collected sediment cores in front of the Diamond Alkali upland site, in preparation for the December 2005 dredging pilot. Results indicate that the top two feet of sediment in that small one-acre area now is less contaminated than what had been on the surface in the late 1990s.
- EPA and NJDOT conducted a hydrodynamic survey, to provide data on river salinity and flow (2004-2005). The data are one necessary component to our evaluation of whether contaminated sediments are being transported into Newark Bay.
- USACE's 2004 bathymetry survey has been compared with historical surveys to show up to 5 inches/year of sediment accumulation in the river channel and no accumulation (or potential scour) in the shoals.
- In May 2005, EPA tested sediment stability at 15 locations in the river. Ex. 5, predecisional & Ex. 5, predecisional & deliberative; atty-client communication
- NJDOT completed geophysical and Sediment Profile Imagery surveys (Summer-Fall 2005) to map sediment texture and depth of the biologically active zone in sediments. These data are crucial to our ability to extrapolate the extent of contamination from cores at single points to volumes that need to be remediated, and to the risk assessments.
- In October-November 2005, EPA collected sediment cores from 15 locations in the river to determine history of contamination ("high resolution cores"). EPA also started a water quality monitoring program to determine extent of contamination in the water column. Results are expected back in April 2006.
- On December 5-9, 2005, NJDOT led the partner agencies in implementing an environmental dredging and sediment decontamination pilot. 5000 cubic yards of sediment were dredged in a 1.5 acre area of the river near downtown Newark to study dredging productivity and sediment resuspension rates. The dredged material will be decontaminated later in Winter 2005-6 using two technologies: sediment washing and thermal destruction.
- In January 2006, EPA collected 12 additional sediment cores in the lower six miles to confirm extent of contamination and update cores collected in the 1990s to current conditions ("low resolution cores"). Data, expected back in April, will be used in the IRM evaluation to Ex. 5, predecisional & deliberative; atty-client communication